Monday, June 8, 2020

Fueled by a stronger-than-expected monthly national employment report, President Donald Trump is vowing to press the US Congress to craft a bipartisan COVID-19 response package this summer that places a heavy emphasis on policies that would accelerate the return of the American economy as it emerges from the pandemic-driven shutdown. The White House drive comes amid indications in some quarters that the resumption of activity in the country may be contributing to an increase in new coronavirus cases in some areas, and mass protests in communities across the US that health experts say could also prolong the pandemic.

“May was another awful month for the job market. . .I expect employment to fall by 3.3 million and the unemployment rate to rise to 20.5 percent,” predicted Moody Analytics’ oft-quoted Mark Zandi in an email to POLITICO ahead of Friday’s national
jobs report. “The US has the ignominious distinction of suffering the biggest increase in unemployment of any country of any size on the planet . . . [which] goes to how poorly the federal government managed the health crisis and the higher number of infections and deaths.”

The actual report released Friday by the Department of Labor’s Bureau of Labor Statistics (BLS), however, revealed that the US economy added 2.5 million jobs in May, a surge that dropped the national unemployment rate down to 13% as states and territories began the process of reopening and resuming economic activity that was willfully brought to a halt in March.

The strong BLS report touched off speculation in Washington on Friday that Republicans, who have resisted Democratic calls for quick action by the US Senate on a massive US$3 trillion coronavirus relief measure passed by the US House in May, might pivot and declare further federal COVID-19 response legislation to be unnecessary. President Trump and his advisors, however, signaled they still expect bipartisan negotiations to begin in the coming weeks on another major package, and reiterated that payroll tax relief will be high on the president’s agenda in the upcoming talks. POLITICO’s Nancy Cook reports that the White House, buoyed by the new jobs numbers and seeking to support the case for a suspension of payroll taxes and other pro-growth policies, is preparing a post-COVID election-season messaging campaign reminiscent of the “recovery summer” thematic deployed by President Barack Obama 10 years ago following the enactment of his own “stimulus” spending plan.

One aspect of Friday’s BLS report was not positive: joblessness among black Americans rose to 16.8 percent, nearly four percentage points higher than the overall national unemployment figure. The disparity is sure to be cited this week as the national policy conversation continues to be driven by the difficult societal issues that were elevated by the tragic death of US citizen George Floyd at the hands of a white police officer last month in the streets of Minneapolis. Mr. Floyd will be laid to rest Tuesday in Houston. Former Vice President Joe Biden, who on Saturday officially clinched the Democratic nomination for the US presidency, is scheduled to meet with Mr. Floyd’s family.

Public health officials continue to warn that the mass protests occurring across the nation in the wake of Mr. Floyd’s killing could help to ignite a second wave of coronavirus cases. The New York Times this weekend posted an interactive map indicating that the number of COVID-19 cases is currently rising in nearly 20 states as the American economy reopens.

**Tax and Economic Development Updates**

Despite initial projections that the Main Street Lending Program (MSLP) would be operational and providing loans to small- and mid-sized businesses by early this month, the Federal Reserve is still currently “working to create the infrastructure to operationalize the program and not yet accepting program documents.” That said, on Friday, the Federal Reserve Bank of Boston published various agreements outlining State Street Bank and Trust Company’s (State Street) role as custodian and accounting administrator for the MSLP – including a provision allowing State Street
to receive up to US$1.83 million per month in custody and administration fees, along with additional fees for loans provided through the program. We expect to learn more this week about the MSLP following a busy schedule of various Federal Reserve committee meetings.

Looking ahead, our report last week that the most recent jobs numbers might provide Republicans with support in pushing back against House Democrats’ sweeping economic assistance package appears to be coming to fruition. For example, White House economic advisor Larry Kudlow is beginning to advocate that “we need to move from rescue assistance, to more long-term economic growth incentives.” Moreover, Senate Committee on Finance Chairman Chuck Grassley’s (R-IA) spokesperson has indicated that the senator will “work with his colleagues on any potential further coronavirus response legislation if it becomes necessary,” though “[i]t’s too early to say what that legislation might encompass.” That said, House Committee on Ways and Means Chairman Richard Neal (D-MA) has made clear that “[i]t would be extremely irresponsible for Congress to take a step back at the first sign of improvement” and is continuing to press for additional economic stimulus measures. To that end, Politico is reporting that “House Democrats are working overtime to get support for clean energy in any next coronavirus package.” However, given the potential Republican opposition to that approach, Chairman Neal has suggested that he may pursue these energy incentives “in tandem” with the House Democrats’ push on the recently released infrastructure package.

Health Updates

The New York Times reports this morning that some hospitals that received billions in federal funds to assist with lost revenue during the pandemic also laid off or reduced the pay of medical professionals and lower-paid workers – while top executives still received millions in pay. The newspaper reviewed tax and securities filings of 60 large hospital chains – which received more than US$15 billion in emergency funds – and noted the entities “are collectively sitting on tens of billions of dollars of cash reserves that are supposed to help them weather an unanticipated storm. They awarded their five highest-paid officials about [US]$874 million in the most recent year for which they have disclosed their finances. At least 36 of those hospital chains have laid off, furloughed or reduced the pay of employees as they try to save money during the pandemic.” The article explains that hospitals are restricted in their ability to use the bailout funds to pay the salaries of top executives, though “it doesn’t stop recipients from continuing to award large bonuses.” In an article in Bloomberg Law, Squire Patton Boggs attorneys Marisa Darden, David Maria and Thomas Zeno – all former prosecutors – note providers accepting money from the Provider Relief Fund accept dozens of terms and conditions, and “a violation of any of the terms and conditions may taint all of the funds.” In a Triage Health Law blog post, our colleagues Sven Collins and Callan Smith explain that the Department of Health and Human Services (HHS) “will soon be examining the first batch of quarterly reports on use of funds, due by July 10, from providers that received over US$150,000 of CARES Act funding. And HHS isn’t the only one watching, as the media and Congress have already questioned the methodology behind the US$77 billion in disbursements HHS has made thus far.”

Senators Robert Menendez (D-NJ) and Robert Casey (D-PA) and Representatives Bill
Pascrell, Jr. (D-NJ) and Jimmy Panetta (D-CA) led a bicameral letter to HHS Secretary Alex Azar and Centers for Medicare and Medicaid Services (CMS) Administrator Seema Verma, expressing their concern about the spread of COVID-19 in nursing homes. The lawmakers advocated for more federal resources and guidance to support these facilities, calling on HHS to provide: “a comprehensive national testing plan that includes providing testing kits for our nation’s nursing homes; a strategy to ensure all nursing homes and [long-term care] facilities have adequate personal protection equipment for their residents and staff; a plan to address staff shortages and guidance on how nursing homes can use separate staff and facilities for residents with COVID-19; [and] greater resources for nursing homes so they can complete accurate and timely federal reports and provide updates to families of nursing home residents.” As we reported last week, CMS posted the first set of underlying COVID-19 nursing home data and inspections results on Nursing Home Compare. CMS plans to enhance enforcement for facilities with persistent infection control violations, and it will also impose enforcement actions on facilities with lower level infection control deficiencies “to ensure they are addressed with increased gravity.” More information on nursing home surveys, planned enforcement actions and quality improvement activities is available here.

Over 60 House lawmakers wrote to HHS Secretary Azar on Friday, requesting HHS comprehensively study the impact of COVID-19 on pregnant women. They noted, “It is critically important that pregnancy status be included as part of demographic data collected and reported on COVID-19 testing numbers, confirmed case counts, hospitalizations, and fatalities.” In mid-May, the National Institutes of Health announced “a multipronged study to understand the effects of the COVID-19 pandemic during and after pregnancy.” NIH will try to determine the risk of pregnant women with COVID-19 transmitting the virus to their fetus and whether changes to care delivery, implemented due to the pandemic, led to more complications and cesarean delivery. Researchers will track pregnant women with COVID-19 for six weeks after childbirth, and they will monitor newborns until they are discharged from the hospital.

A group of 41 bipartisan senators wrote to Senate Committee on Appropriations Subcommittee on Labor, HHS, Education and Related Agencies Chairman Roy Blunt (R-MO) and Ranking Member Patty Murray (D-WA), expressing support for additional funding for community health centers in the next coronavirus relief package. Led by Senators Debbie Stabenow (D-MI) and Roger Wicker (R-MS), the lawmakers acknowledged the previous aid appropriated in recent legislation, but they noted health centers anticipate US$7.6 billion in lost revenues, as well as 105,000 lost jobs.

**Trade Updates**

The US and China have averted a standoff related to commercial passenger flights. As we reported last week, the Trump Administration announced that it would be banning Chinese passenger airlines from flying scheduled service to the United States starting June 16, after US airlines were excluded from an earlier plan allowing airlines to operate one commercial passenger flight a week. Chinese officials subsequently announced it would allow foreign airlines excluded from the earlier plan to resume flights. On Friday, the Department of Transportation modified its
original order and announced it would grant Chinese carriers the right to operate two weekly passenger flights to the United States. Passenger airlines have been among the hardest hit by the COVID-19 pandemic as countries around the world locked down travel and business operations in response to the global health crisis.

On Friday, the Department of Commerce announced that the International Trade Administration (ITA) and its US and Foreign Commerce Service (USFCS) would temporarily reduce or eliminate the costs of several of export services through September 2020 to provide relief to businesses affected by COVID-19 and promote US exports. ITA and USFCS programs support US exports. According to the US Bureau of Economic Analysis, exports and imports plummeted in April, by US$38.9 billion and US$31.8 billion, respectively, as compared to March.

**Oversight Updates**

*The Daily Beast* reports that a casino company owned by the husband of Representative Susie Lee (D-NV) received millions of dollars in Paycheck Protection Program (PPP) loans. Initially, the Small Business Administration’s (SBA) guidance excluded gaming companies from the program, but in early April, Representative Lee lobbied the federal government to expand eligibility to include the industry. Within a couple weeks of Representative Lee’s letters to the Treasury Department and the SBA, the regulators amended PPP rules to make the requested change. Shortly thereafter, her husband’s company, which owns at least two casinos, received US$5.6 million worth of PPP loans. Representative Lee’s spokesperson said that she “had no influence over the decision to file the application, and she had no influence over whether or not that application was approved or denied.”

*The New York Times* reports concern about regional disparity in the administration’s distribution of coronavirus relief to the nation’s farmers. The Department of Agriculture has set aside US$16 billion for relief from economic damage caused by the pandemic, and additional assistance is likely, as some estimate that farmers’ losses could climb to US$40 billion. Even prior to the pandemic, several members of Congress noted that farmers in states supportive of President Trump received more aid than those in states that are not. Representative Angie Craig (D-MN), a member of the House Committee on Agriculture, said that the panel is studying how to distribute coronavirus aid more fairly. Another committee member, Representative Jim Costa (D-CA), said that “We [in Congress] need to put some guard rails on this.” While the Inspector General (IG) of the Department of Agriculture received an additional US$750,000 under the CARES Act for coronavirus-related oversight, Representative Cheri Bustos (D-IL) said that the president’s pattern of IG reprisals makes congressional oversight even more important.

**State Updates**

In a trend occurring in more than 35 states, prisoners are being released from correctional facilities to help officials keep them safe and to curb infection rates of COVID-19. Lawsuits across the nation have also been filed by prisoners and advocacy groups to encourage more releases or dictate the rules of release programs. For example, in **Connecticut**, on Sunday, Attorney General William Tong (D) settled a lawsuit filed by the American Civil Liberties Union to ensure people age
65 and above and those with at risk conditions be prioritized for release and also stop certain response protocols deemed punitive for persons still incarcerated.

**Arizona** Governor Doug Ducey (R) finalized action on all remaining legislation on his desk, signing a total of 32 bills late last week. The bills include legislation to expand the Arizona Teachers Academy, increase accountability at boards and commissions, enhance suicide prevention training and improve administration of Arizona’s 529 College Savings Program. The governor signed a total of 90 bills during the session, an all-time low, with no vetoes.

**Kentucky** Governor Andy Beshear (D) last week said it was time for the statue of Confederate leader Jefferson Davis to be taken out of the state capitol rotunda, seeing it as a divisive symbol. The comment comes on the heels of George Floyd’s May 25 death in police custody, as protests, demonstrations and riots have since become a daily occurrence in states across the country. Other states are echoing calls for the removal of Confederate statues, including in **Virginia**, where it was also announced late last week that the **statue of Confederate General Robert E. Lee** near downtown Richmond will be removed as soon as possible and go into storage while the governor’s administration seeks public input about its future.

Responding to several senators’ requests that he do so, the IG of the Department of Labor is looking into the enforcement activities of and guidance issued by the Occupational Safety and Health Administration (OSHA) concerning the coronavirus. In announcing the audit last week before the House Committee on Oversight and Reform Subcommittee on Government Operations, the IG noted that he was “very surprised” that OSHA had issued just one COVID-19-related citation, even though it received thousands of complaints.

This post includes contributions from **Brandon Roman** and **Mara Sheldon**.

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